

DWIGHT C. HOLTON, OSB #09054
United States Attorney
District of Oregon

ROBERT D. NESLER, OSB #85379
bob.nesler@usdoj.gov

ANNEMARIE SGARLATA, OSB #065061
annemarie.sgarlata@usdoj.gov

Assistant United States Attorneys
1000 SW 3rd Avenue, Suite 600
Portland, OR 97204-2902
Telephone: (503) 727-1000
fax: 503-727-1117

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

11-CV-000164-MA

v.

**AMENDED COMPLAINT *IN REM*
FOR FORFEITURE**

**2915 NE ROCKY BUTTE ROAD,
MULTNOMAH COUNTY, STATE AND
DISTRICT OF OREGON, REAL
PROPERTY WITH BUILDINGS,
APPURTENANCES, AND
IMPROVEMENTS, *in rem*,**

and,

**14119 SE BELLA VISTA CIRCLE,
CLARK COUNTY, STATE AND DISTRICT
OF WASHINGTON, REAL
PROPERTY WITH BUILDINGS,
APPURTENANCES, AND
IMPROVEMENTS, *in rem*,**

Defendants.

This Amended Complaint is filed to correct an error in the legal description of the second defendant.

Plaintiff, United States of America, by Dwight C. Holton, United States Attorney for the District of Oregon, and Robert D. Nesler, Assistant United States Attorney, for its amended complaint *in rem* for forfeiture, alleges:

I.

This Court has jurisdiction pursuant to 18 U.S.C. § 985; 21 U.S.C. § 881; 28 U.S.C. §§ 1345, 1355, 1356 and 1395; and 19 U.S.C. § 1610.

II.

Defendant, *in rem*, is real property commonly known as 2915 NE Rocky Butte Road, Multnomah County, Oregon, and more particularly described as:

LOT 10, BLOCK 2, OLYMPUS ESTATES, IN THE CITY OF
PORTLAND, MULTNOMAH COUNTY, STATE OF
OREGON.

The defendant is now and during the pendency of this action will be within the jurisdiction of this Court. Defendant is real property located in the District of Oregon in Multnomah County.

Defendant, *in rem*, is real property commonly known as 14119 SE Bella Vista Circle, Clark County, Washington, and more particularly described as:

BELLA VISTA LOT 20 & #1 LOTS 8 & 9.

The defendant is now and during the pendency of this action will be within the jurisdiction of this Court. Defendant is real property located in the State of Washington, Clark County. Defendant 14119 SE Bella Vista Circle constitutes proceeds of, or facilitated violations of 21 U.S.C. § 841, *et. seq.*, which occurred within the District of Oregon.

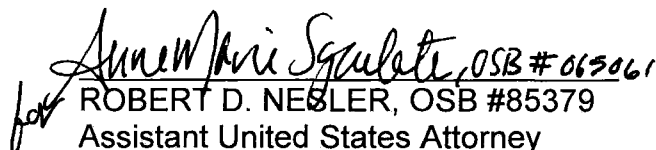
III.

Defendants, *in rem*, real property commonly known as 2915 NE Rocky Butte Road, Multnomah County, Oregon, and 14119 SE Bella Vista Circle, Clark County, Washington, were used, or intended to be used, to commit or to facilitate the commission of a violation of Title 21, United States Code, Section 841(a)(1), and are forfeitable pursuant to the provisions of Title 21, United States Code, Section 881(a)(7), as more particularly set forth in the Affidavit of Special Agent Frank Heckendorn, Federal Bureau of Investigation, marked as Exhibit A, attached and incorporated herein by this reference.

WHEREFORE, plaintiff, United States of America, prays that due process issue to enforce the forfeiture of defendants, *in rem*, real properties commonly known as 2915 NE Rocky Butte Road, Portland, Oregon, and 14119 SE Bella Vista Circle, Vancouver, Washington, more particularly described above; that due notice be given to all interested persons to appear and show cause why forfeiture of these defendants, *in rem*, should not be decreed; that due proceedings be had thereon; that these defendants be forfeited to the United States; that the plaintiff United States of America be awarded its costs and disbursements incurred in this action, and that plaintiff have such other and further relief as is just and equitable.

DATED this 8th day of April, 2011.

DWIGHT C. HOLTON
United States Attorney


for ROBERT D. NESLER, OSB #065061
Assistant United States Attorney
503-727-1069

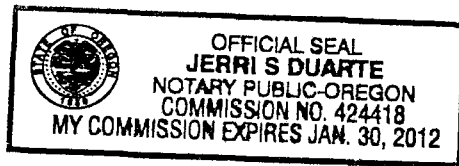
STATE OF OREGON)
) ss.
County of Multnomah)

I, FRANK HECKENDORN, being first duly sworn, depose and say that I am a Special Agent, Federal Bureau of Investigation, and that the foregoing Amended Complaint *in rem* for Forfeiture is made on the basis of information officially furnished, and upon the basis of such information the Amended Complaint *in rem* for Forfeiture is true as I verily believe.



FRANK HECKENDORN
Special Agent
Federal Bureau of Investigation

SUBSCRIBED AND SWORN to before me this 8th day of April, 2011.





NOTARY PUBLIC FOR OREGON

PURPOSE OF THE AFFIDAVIT

4. On December 21, 2010, law enforcement officers served a search warrant issued by the State of Oregon, County of Multnomah, at 2915 NE Rocky Butte Road, Portland, Oregon. Officers seized approximately 225 live marijuana plants from this property, along with assorted marijuana growing equipment located within the residence. On December 21, 2010, law enforcement officers served a related search warrant issued by the State of Washington, County of Clark, at the residence located at 14119 SE Bella Vista Circle, Vancouver, Washington. Officers seized approximately 238 live marijuana plants from this property, along with assorted marijuana growing equipment located within the residence.

5. This affidavit is offered in support of a complaint in rem seeking forfeiture of the residences and real property commonly known as 2915 NE Rocky Butte Road, Portland, Oregon, more particularly described in Attachment A, and 14119 SE Bella Vista Circle, Vancouver, Washington, more particularly described in Attachment B, which are subject to forfeiture pursuant to Title 21 U.S.C Section 881(a)(7), as real property that was used to facilitate violations of Title 21 U.S.C. Section 841(a)(1). This affidavit does not include all of the facts known to me regarding this investigation; only those facts I believe are relevant to this seizure.

INVESTIGATION

2915 NE Rocky Butte Road

6. On December 15, 2010, the Multnomah County Circuit Court issued search warrants for the properties of 2915 NE Rocky Road, Portland, Oregon, and 17717 NE Pacific Street, Portland, Oregon.

7. According to the affidavit underlying those search warrants, Multnomah County Sheriff's Office, Deputy Zwick received information from a Confidential Informant (CI). The CI said a

group of Asian males and females were involved in the commercial distribution of marijuana in the Portland Metro area. The CI identified Kiet Nguyen and Huy Anh Nguyen as using 2915 NE Rocky Butte Road to grow illegal marijuana. The CI further said that Kiet Nguyen and Huy Nguyen use the medical marijuana law to grow and distribute commercial amounts of marijuana across the country. This CI said this group has been manufacturing and distributing marijuana for over ten years.

8. Deputy Zwick's investigation showed that Minhthy Nguyen and Tu Tran are paramours and have two minor children who reside with them at 2915 NE Rocky Butte Road. Huy Nguyen and Kiet Nguyen reside at 17717 NE Pacific Street, Portland, Oregon. Huy Nguyen, Kiet Nguyen and Minhthy Nguyen are siblings.

9. Deputy Zwick contacted the Oregon Medical Marijuana Program (OMMP) and was advised that 2915 NE Rocky Butte Road and 17717 NE Pacific Street were not registered marijuana grow sites. He also learned that Tu Tran was a registered patient and grower for himself but not a caregiver for anyone. Huy Nguyen has a medical marijuana card for himself as patient, and as a grower for himself. Minhthy Nguyen has a medical marijuana card for herself as a patient, and as a grower for herself. Huy Nguyen and Minhthy Nguyen registered 1030 NE 102nd Avenue, Apt. 18, Portland, Oregon, as the location for their medical marijuana grows.

10. While conducting surveillance from 10 a.m. December 2, 2010, through 7 p.m. on December 4, 2010, Deputy Zwick observed that Huy Nguyen would come and go from 17717 NE Pacific Street 'at all hours of the day and night.' He also identified Kiet Nguyen as coming and going from the residence. Deputy Zwick found discarded trash from 17717 NE Pacific Street, Portland, Oregon, which included mail to 2915 NE Rocky Butte Road bearing the names of Kiet Nguyen, Huy Nguyen and Minhthy Nguyen.

11. After obtaining and executing search warrants at the two residences, Deputy Zwick wrote a report summarizing the searches and interviews conducted incident to them.

12. According to his report, Deputy Zwick was present during the execution of the search warrant at 2915 NE Rocky Butte Road. Upon entry to the house, he observed several stacks of plywood and several bags of topsoil in the garage. Upon entering the house, Deputy Zwick immediately smelled a strong odor of marijuana that caused his eyes to water. Tu Tran, Minh Le and Minhthy Nguyen's two children were found in the house. Deputy Zwick walked through the master bedroom on the third floor of the residence and observed that furniture in this room consisted of a computer desk and chair, two mattresses on the floor and children's toys spread throughout the room. The living room on the second level did not have any furniture, and there were "next to no supplies" in the kitchen. He observed a moldy open hole in the ceiling above the kitchen counter with exposed pipes. On the main level of the residence, Deputy Zwick observed children's toys everywhere and noted that the toys reeked of marijuana.

13. Deputy Zwick observed a door located on the main level of the residence that entered into marijuana grow rooms and drying rooms. Deputy Zwick noted that the door was not locked and children's toys were right in front of it.

14. Detective Zwick reported:

"I could see that the grow room had a lot of work done to it. There were sheets of plywood everywhere and recent construction and a walkway or bridge built from the drying room into two new areas underneath the house where two more grow rooms were being constructed. There was wiring coming out the electrical junction box in every direction and it did not look like it was up to electrical code. The main area of the marijuana grow room was dedicated to drying marijuana. There were blue tarps on the floor and there was a piece of cardboard approximately eight to twelve feet long in length lying in the middle of the floor covered with drying marijuana buds. Next to the drying marijuana buds were six or seven square boxes filled to the brim with marijuana buds. Some of those boxes had packaged marijuana buds in Ziploc bags and some had just loose marijuana buds. There were also black plastic bags full of marijuana buds. There

was approximately 80 to 100 pounds of processed marijuana buds in that room, some packaged for distribution and some not packaged. Next to the marijuana buds were packaging materials, a scale and a plastic handle with a scoop on it.”

“Directly under that floor were a set of stairs that went into another large room directly under the drying room, where there were 225 growing marijuana plants. There were 18 hooded lights and two large charcoal air filters from the basement. There were new vents coming off in all directions to exhaust the smell of the marijuana to different areas of the house and outside.”

15. During a December 21, 2010, interview with Tu Tran, Tran told Deputy Zwick that he had a medical marijuana card to grow marijuana, and that he is a caregiver for 10 patients. Detective Zwick had previously contacted OMMP and learned that Tran was a patient and grower only for himself; he was not a caregiver for anyone else. Tran told Deputy Zwick he had OMMP cards for 10 people in the marijuana grow room. Tran said he was allowed to grow 25 plants per patient, and that with 10 cards, he was allowed to grow 250 plants. Detective Phil Maynard, assigned to the Regional Organized Crime and Narcotics (ROCN) Task Force, located the OMMP applications and noted that seven of the applications did not list Tu Tran or Mingthy Nguyen as designated caregiver or person responsible for grow site, nor did they list 2915 NE Rocky Butte Road as the grow location. The remaining three applications were for Tu Tran, Mingthy Nguyen, and her brother Huy Nguyen. Tran said he was caregiver for all of the individuals listed on the applications. He could not, however, name any of the seven individuals listed on the applications, stating, “I don’t know who they are.”

16. Law enforcement officers showed Minhthy Nguyen the medical marijuana applications located at 2915 NE Rocky Butte Road, which included DMV photographs. She did not know any of the people listed except for her brother, Huy Nguyen. Minhthy Nguyen told Deputy Zwick that she had a medical marijuana card for headaches. She uses marijuana in tea in the mornings

but she hasn’t used it in a long time because of her job. She said it was Tu Tran’s idea for her to

get a medical marijuana card. He told her where to get it and drove her to the appointment and paid for the card.

17. Law enforcement officers subsequently contacted some of the individuals listed on the applications and none indicated that they had designated Tu Tran or Minhthy Nguyen as their caregiver or grower.

18. Regarding his employment, Tu Tran told Deputy Zwick that he was self-employed and said he buys “stuff” from Vietnam and sells it here. He said last year was the last time he was able to sell anything. He said they pay \$3,000 a month in rent at Rocky Butte directly to the bank. He affords his lifestyle and pays his rent by receiving donations for the marijuana. He said, “The people I care for, they pay me money and I give them marijuana in return.”

19. Minhthy Nguyen said she has been with Tu Tran for 10 years and they have two children together. She believes Tu Tran earns his income working at a nail salon. Tran gives her cash sometimes to help with the bills and pay the rent. Minhthy Nguyen said she brings home about \$3,000 a month from her employment. She said that \$3,700 a month comes directly out of a checking account at Wells Fargo Bank that is used to pay rent.

20. Deputy Zwick said Minhthy Nguyen works at Providence Hospital. Law enforcement officers seized a Social Security statement addressed to Minh T. Nguyen at 2915 NE Rocky Butte Road, Portland, Oregon 97220. This statement showed Minhty Nguyen’s reported earnings, as follows:

1994	\$60
1995	\$162
1996	\$3,800
1997	\$3,221
1998	\$7,784
1999	\$19,566
2000	\$25,836

2001	\$25,996
2002	\$22,972
2003	\$27,976
2004	\$30,332
2005	\$34,292

21. Oregon Department of Motor Vehicle records show that a 2005 Porsche Cayenne, a 2004 Acura MDX and a 1998 BMW M3 are titled in her name. She said she was paying \$600 a month for the Porsche and \$400 a month for the Acura but the BMW wasn't her vehicle. She also said the Porsche and Acura have been paid off. Deputy Zwick asked Minhthy Nguyen how she can afford to pay her bills, rent and food. Minhthy Nguyen told him Tran gives her money to help pay bills but she does not know where it comes from.

22. According to Deputy Zwick's affidavit, Portland General Electric (PGE) records show the following kilowatt usage at 2915 NE Rocky Butte Road:

November 2009	– 360 kilowatts
December 2009	– 240 kilowatts
January 2010	– 540 kilowatts
February 2010	– 960 kilowatts
March 2010	– 1140 kilowatts
April 2010	– 1020 kilowatts
May 2010	– 2880 kilowatts
June 2010	– 6720 kilowatts
July 2010	– 8160 kilowatts
August 2010	– 7740 kilowatts
September 2010	– 6660 kilowatts
October 2010	– 6000 kilowatts
November 2010	– 6600 kilowatts

23. Deputy Zwick's affidavit described Steve Sprague as an investigator with PGE's Energy Recovery Unit. He has been employed by PGE for over 25 years and has vast knowledge of indoor marijuana growing operations. Sprague told Deputy Zwick that for a house that is 4500 square feet the average monthly kilowatt usage is anywhere between 1500 to 3000 kilowatts. If

there is a pool or hot tub the electrical use might be higher. Mr. Sprague considered that with

power ranging from 6000 – 8000 kilowatt hours per month, it is very likely there is an indoor marijuana grow.

24. As noted above, the power usage for 2915 NE Rocky Butte Road exceeded 6000 kilowatt hours beginning June 2010.

25. On December 21, 2010, Law enforcement officers also served a search warrant at 17717 NE Pacific Street, Portland, Oregon, which is the residence of Kiet Nguyen and Huy Nguyen, Minhthy Nguyen's brothers. Deputy Zwick wrote in his report that he found a (marijuana) grow room at the Pacific Street residence that was very similar to the grow at Rocky Butte Road, with the same style of lights, ballasts and plywood framework, and 69 marijuana plants.

26. On December 21, 2010, Deputy Zwick and Detective Phil Maynard interviewed Huy Nguyen about the marijuana growing operation at 17717 NE Pacific Street. Huy Nguyen said he was a medical marijuana card holder and that he has the card for headaches. He said it was Tu Tran's idea for him to get a medical marijuana card and that Tran told him what doctor to see. Huy Nguyen knew he was required to register his grow site (at 17717 NE Pacific Street) but said he just didn't do it.

27. While executing the search warrant at Pacific Street, Deputy Zwick found a packet of medical marijuana applications that included copies of applications found at 2915 NE Rocky Butte Road. Huy Nguyen did not know who the applications belonged to and said he didn't know any of the people referenced in the applications. He said Tu Tran just gave him the packet and said now you can grow for all these people.

28. Deputy Zwick asked if he had any processed marijuana at his residence on Pacific Street. Huy Nguyen replied, no, that he had taken it all, approximately 10 pounds, to Tu Tran's house in his Lexus automobile. Huy Nguyen used boxes to put the marijuana in and pointed to boxes in

the residence. Deputy Zwick observed that the boxes Huy Nguyen pointed to were the same type of cardboard boxes that were found at 2915 NE Rocky Butte Road. Other items found at 17717 NE Pacific Street included six hood lights, five ballasts, a charcoal filter and 69 marijuana plants.

29. On December 27, 2010, Deputy Zwick interviewed Kiet Nguyen. Kiet Nguyen said he and Huy Nguyen had lived in an apartment with their parents for over 17 years. Then they moved out of the apartment and into the house on Pacific. Kiet Nguyen said he and his brother split the rent at 17717 NE Pacific Street and pay around \$1,500 a month. Real property records show this property is owned by an individual living outside of Oregon.

30. Deputy Zwick asked how Huy and Kiet Nguyen came to be the owners of the Rocky Butte residence where their sister Minhthy and Tu Tran were living. Kiet said he and his brother Huy purchased 2915 NE Rocky Butte Road because they had a good credit score and could get the loan. Kiet Nguyen said that his sister, Minhthy Nguyen and Tu Tran pay the mortgage each month.

31. Huy Nguyen also advised Deputy Zwick that Tu Tran and Minhthy Nguyen asked him to buy the Rocky Butte residence and title it in his and Kiet's name. He stated that Tu Tran and Minhthy Nguyen pay the monthly mortgage for the Rocky Butte Residence.

14119 SE Bella Vista Circle, Vancouver, Washington

32. While executing the December 21, 2010, search warrant at 2915 NE Rocky Butte Road, Deputy Zwick found a Clark County utilities statement for 14119 SE Bella Vista Circle in the name of Tu Tran, along with a deed for the residence at 14119 SE Bella Vista Circle in Vancouver, Washington, and other mail addressed to Huy Nguyen and Kiet Nguyen at 14119 SE Bella Vista Circle. The records showed that Minhthy Nguyen signed over the title of the Bella

Vista residence to Kiet and Huy during 2009, but Kiet and Huy quit-claimed the residence back to Minhthy Nguyen during 2010.

33. Real property records on file with Clark County show several financial transactions relative 14119 SE Bella Vista Circle, as follows:

December 28, 2006: Minhthy Nguyen purchased 14119 SE Bella Vista Circle from Clarence F. and Norma L. LaFray for \$600,000.

December 28, 2006: Tu Tran quit-claimed his ownership in the property to Minhthy Nguyen. A Real Estate Excise Tax Affidavit filed with Clark County provided a statement saying the Quit Claim deed was filed "to separate community property."

December 8, 2009: Minhthy Nguyen filed a trust deed naming Long Vo as beneficiary. The amount listed on the trust deed was \$150,000.

December 11, 2009: Minhthy Nguyen filed a Warranty Deed granting ownership of this property to Huy Nguyen and Kiet Nguyen. There was not a monetary amount associated with the warranty deed. A deed of trust was not filed, nor was there any mention of the previous trust deed naming Long Vo as beneficiary.

October 19, 2010: Minhthy Nguyen filed a Quit Claim Deed naming Huy Nguyen and Kiet Nguyen as grantors and herself as grantee.

34. During his December 27, 2010, interview with Kiet Nguyen, Deputy Zwick asked why his sister Minhthy gave the Bella Vista Circle property to him and his brother Huy, and then took it back. Kiet Nguyen responded that he did not know why she did that, but that he doesn't ask questions when his family asks him to do something. Kiet Nguyen said the house in Vancouver on Bella Vista was being run by Tu and that Tu wanted to develop the property. Kiet Nguyen said his sister and Tu used to live there before they moved into the Rocky Butte house. Huy Nguyen told Deputy Zwick that he did not know why mail would be addressed to him at 14119 SSE Bella Vista Circle. He also said Tu Tran told him there was marijuana there.

35. During his December 21, 2010, interview with Minhty Nguyen, Deputy Zwick asked if she owned any houses in Washington. She told him she owned a house on Bella Vista and she used to live there but she is trying to sell the property and that no one lives there. When questioned why Tu Tran was the power subscriber and why a very high power bill had been incurred on that residence, Minhthy Nguyen responded that they keep the power on to keep it warm in the house so that people can look at it to buy it.

36. On December 28, 2010, Financial Investigator John Shirron, Clark-Skamanian Drug Task Force, contacted Norma LaFray, one of the previous owners of the Bella Vista property. Norma LaFray said Tu knocked on their door approximately 4 years after they had tried to sell the house and told them he wanted to purchase their property. LaFray said Tu told them he owned the adjacent property, and wanted to expand, and was going to tear down their house and build a new one. LaFray said Tu allowed her to remove various items from the residence such as the furnace and a brand new toilet. LaFray said the buyers, Tu Tran and Minhthy Nguyen, put approximately \$1,000.00 down in earnest money and paid the balance, approximately \$600,000.00, in a cashier's check. Tran told LaFray that he and Minthy Nguyen had had recently sold a house in Portland and they used these funds to purchase 14119 SE Bella Vista Circle.

37. The affidavit underlying the search warrant issued for 14119 SE Bella Vista Circle shows kilowatt usage at that residence as follows:

January 2010 – 310 Kilowatts
 February 2010 – 210 Kilowatts
 March 2010 – 40 Kilowatts
 April 2010 – 1800 Kilowatts
 May 2010 – 2150 Kilowatts
 June 2010 – 4460 Kilowatts
 July 2010 – 2550 Kilowatts
 August – 560 Kilowatts
 September – 1370 Kilowatts

October – 4020 Kilowatts

38. Officers serving the search warrant at Bella Vista seized 238 marijuana plants and equipment used to grow the marijuana. Deputy Zwick assisted Detective Jeff Brockus with the service of a search warrant at this location. Deputy Zwick observed that there was no furniture in the house and nobody lived there. It appeared to be dedicated to growing marijuana. Detective Maynard found that a silver key on Tu Tran's key ring fit the front door of the Bella Vista residence. Officers also found several pieces of paperwork belonging to Minhthy Nguyen at Bella Vista, as well as cardboard boxes similar to ones found at 2915 NE Rocky Butte Road and 17717 NE Pacific Street.

SUMMARY

39. Minhthy Nguyen told investigators that her take home pay, from her only employment at Providence Hospital, is \$3,000 a month. Tu Tran appears to have no legitimate means of support and admitted that he affords his lifestyle and pays his rent by receiving donations for the marijuana. Tu Tran and Minhthy Nguyen's known legitimate earnings do not appear to be commensurate with their apparent expenditures and lifestyle.

40. Officer s seized five hundred thirty two (532) marijuana plants on December 21, 2010, from residences owned/financed by Tu Tran and Minhthy Nguyen.

2915 NE Rocky Butte Road –	225
17717 NE Pacific Street –	69
14119 SE Bella Vista Circle –	<u>238</u>
Total	<u>532</u>

Huy Nguyen admitted to transporting 10 pounds of processed marijuana to 2915 NE Rocky Butte Road and approximately 80 to 100 pounds of processed marijuana was found at that location.

Electrical power records for 2915 NE Rocky Butte Road suggest that Tu Tran and Minhth Nguyen had been growing marijuana there since at least June 2010. Power records at 14119 SE Bella Vista Circle significantly increased in May 2010, indicating marijuana has likely been grown there at least between May 2010 and December 2010.

CONCLUSION

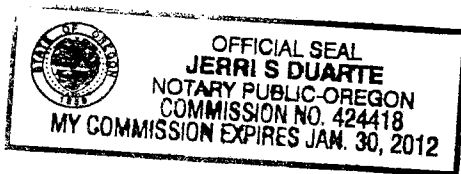
41. Based on the facts set forth herein, as well as my training and experience, I believe probable cause exists to show that 2915 NE Rocky Butte Road, Portland, Oregon and 14119 SE Bella Vista Circle, Vancouver, Washington, were used to commit, or facilitate the commission of, a violation of Title 21 U.S.C Section 841(a)(1), and is forfeitable to the United States Government pursuant to provisions set forth under Title 21 U.S.C. Section 881(a)(7).

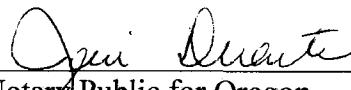
Dated this 8 day of April, 2011.



FRANK HECKENDORN
Special Agent
Federal Bureau of Investigation

SUBSCRIBED and SWORN TO before me this 8th day of April, 2011.





Notary Public for Oregon